

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: DAVID JOHNLEE BILLUPS,

Debtor.

BKY. No.: 03-34137
Chapter 13

**NOTICE OF HEARING AND
MOTION FOR RELIEF
FROM AUTOMATIC STAY**

TO: DAVID JOHNLEE BILLUPS AND HIS ATTORNEY, MICHAEL K.
HOVERSON, MICHAEL K. HOVERSON & ASSOCIATES, 333
WASHINGTON AVE. N., STE. 308, MINNEAPOLIS, MN 55401.

1. Mortgage Electronic Registration Systems, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 20, 2004 at 10:30 A.M. in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota, or as soon as counsel may be heard before The Honorable Gregory F. Kishel, Chief Judge of the United States Bankruptcy Court.

3. Any response to this motion must be filed and delivered not later September 15, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than September 9, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

MOTION TO LIFT AUTOMATIC STAY

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on June 10, 2003. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtor that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage and assignment of mortgage, copies of which are attached hereto as Exhibits A & B, respectively.

6. That pursuant to the provisions of 11 U.S.C. §362, the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That pursuant to the Chapter 13 Plan confirmed on July 31, 2003 the Debtor was to make all current monthly payments due on said mortgage outside of the plan.

b) To date, the Debtor is in default on said payments from November 1, 2003 to date in the amount of \$165.30 per month, plus post-petition late charges.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Movant, Mortgage Electronic Registration Systems, Inc., by its

undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to foreclose its security interest, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: August 27, 2004

By: /e/Thomas J. Reiter
Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262/231605
(F0390)


THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.

VERIFICATION

I, Scott Barnes, Vice President with Mortgage Electronic Registration Systems, Inc. declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: August 27, 2004

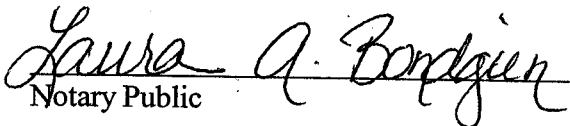
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

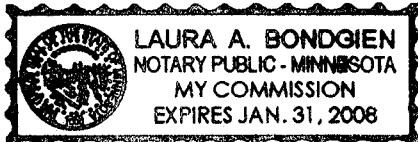
By: 
Scott Barnes

Its: Vice President

Subscribed to and sworn before me this

27th day of August, 2004


Notary Public



514802 ①

Registrar of Titles, Ramsey, MN
Date Filed: 6/13/2002 9:00 AM
As Doc #: 1692096
On CT # ('s):
514802,

JUN 13 2002 9 AM

MORTGAGE

THIS MORTGAGE is made this 3rd day of May 2002 between the Mortgagor, David J. Billups, A Single Person

Aames Funding Corporation DBA Aames Home Loan

(herein "Borrower"), and the Mortgagee,

existing under the laws of The State of California
350 South Grand Avenue, 42nd Floor, Los Angeles, CA 90071

a corporation organized and
whose address is

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ 15,500.00 (herein "Lender"), which indebtedness is evidenced by Borrower's note dated May 3, 2002 and extensions and renewals thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on June 1, 2022;
TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby

grant and convey to Lender, with power of sale, the following described property located in the County of RAMSEY, State of Minnesota:
LOT 11, BLOCK 6, ROBERTSON AND VAN ETEN'S ADDITION TO SAINT PAUL, ACCORDING TO THE RECORDED PLAT THEREOF, AND SITUATE IN RAMSEY COUNTY, MINNESOTA.

1-4 Family Rider attached.

which has the address of 292 Thomas Avenue SAINT PAUL
[Street] [City]
Minnesota 55103 (herein "Property Address");
[ZIP Code]

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:
1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and late charges as provided in the Note.
2. Funds for Taxes and Insurance. Subject to applicable law or a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Mortgage and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional lender.

If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Mortgage.

②

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

David J. Billups (Seal)
David J. Billups -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

(Sign Original Only)

STATE OF MINNESOTA.

Dakota

County of:

On this 3rd day of May, 2002, before me appeared David J. Billups, A Single Person

personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

My Commission Expires: 1-31-2005

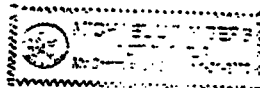
[Signature]
Notary Public

This instrument was drafted by

AAMES FUNDING CORPORATION
350 SOUTH GRAND AVE.
LOS ANGELES, CA 90071

Tax statements for the real property described in this instrument should be sent to:

Aames Home Loan
350 South Grand Avenue
47th Floor
Los Angeles, CA 90071



DOC #:022306

APPL #:0002116901

76(MN) (0003)01

Page 6 of 6

Form 3624

Registrar of Titles, Ramsey, MN

Date Filed: 1/2/2003 8:00 AM

As Doc #: 1723407

On CT # (s):

514802,

When Recorded, Mail and Return To:
Household Mortgage Services
577 Lamont Rd.
P.O. Box 1247
Elmhurst, IL 60126

6421614

ASSIGNMENT OF MORTGAGE

FOR VALUABLE CONSIDERATION, Aames Funding Corporation DBA Aames Home Loan


The State of California, Assignor (whether one or more), hereby sells, assigns and transfers to Mortgage Electronic Registration Systems, Inc. P.O. Box 2028, Flint, MI 48501-2028, Assignee (whether one or more), the Assignor's interest in the Mortgage dated May 3, 2002 executed by David J. Billups, A Single Person

as Mortgagor, to Aames Funding Corporation DBA Aames Home Loan

On CT# 615514802 as Mortgagee, and filed for record On 6-13-2002, as Document Number 1692096 (or in Book 00000 of Page 00000), in the Office of the (County Recorder) (Registrar of Titles) of RAMSEY County, Minnesota, together with all right and interest in the note and obligations therein specified and the debt thereby secured. Assignor covenants with Assignee, its successors and assigns, that there is still due and unpaid of the debt secured by the Mortgage the sum of Fifteen Thousand Five Hundred and No/100

DOLLARS, with interest thereon from May 3, 2002, and that Assignor has good right to sell, assign and transfer the same.

Drafted By:
Aames Funding Corporation
350 South Grand Ave., Los Angeles CA 90071

ASSIGNOR
Aames Funding Corporation DBA Aames Home Loan
By 
Patricia Kuchczynski
Its Assistant Secretary

Send tax statements to:

By _____
Its Assistant Secretary

PREPARED BY:
LIZ PECORARO
577 LAMONT RD.
ELMHURST, IL 60126
630-617-7000

MERS #: 1000460-000 64216142
PH #: 1-888-678-6377

DOC #: 313111 APPL #: 0002116901
Minnesota Assignment of Mortgage 3/97
995(MN) (9803) UN31 9803.01
VMP MORTGAGE FORMS - (800)521-7291

JAN 2 2003 8 AM

1-2 (B)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: DAVID JOHNLEE BILLUPS,

Debtor.

BKY. No.: 03-34137
Chapter 13

**AFFIDAVIT OF MOVANT'S
BANKRUPTCY SPECIALIST**

STATE OF MINNESOTA)

COUNTY OF DAKOTA)

Scott Barnes, being duly sworn on oath states:

1. That I am a Vice President for Mortgage Electronic Registration Systems, Inc. in the Mendota Heights, Minnesota servicing center. In my capacity as a Vice President, I have had the opportunity to review the mortgage account of the Debtor.


2. That pursuant to the Chapter 13 Plan confirmed on July 31, 2003 the Debtor was to make all current monthly payments due on said mortgage outside of the plan.

3. That to date, the Debtor is in default on said payments from November 1, 2003 to date in the amount of \$165.30 per month, plus post-petition late charges.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

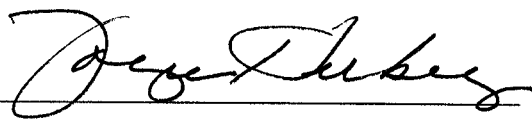
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

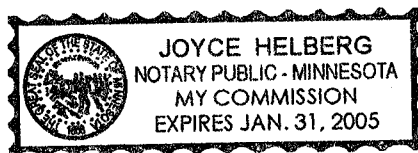
Dated: August 27, 2004

By: 
Scott Barnes
Vice President
1270 Northland Drive, Ste. 200
Mendota Heights, MN 55120

Subscribed to and sworn before me this

27th day of August, 2004.





UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: DAVID JOHNLEE BILLUPS,

Debtor.

BKY. No.: 03-34137
Chapter 13

**MEMORANDUM IN SUPPORT
OF MOTION FOR RELIEF
FROM THE AUTOMATIC STAY**

MEMORANDUM OF LAW

I. Factual Background

The Debtor filed his petition herein on June 10, 2003 under Chapter 13 of the Federal Bankruptcy Code and listed real property located in Ramsey County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Lot 11, Block 6, Robertson & Van Etten's Addition to Saint Paul,
REGISTERED PROPERTY.

The amount due under said mortgage loan was approximately \$16,000.00. Pursuant to the Chapter 13 Plan confirmed on July 31, 2003 the Debtor was to make all current monthly payments due on said mortgage outside of the plan. The Debtor is in default on said payments from November 1, 2003 to date in the amount of \$165.30 per month, plus post-petition late charges.

II. Argument

GOOD CAUSE EXISTS TO GRANT THE MOVANT
RELIEF FROM THE STAY FOR CAUSE.

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following

conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtor has failed to meet his contractual obligation in making payments as they become due after the filing of this petition, and such a failure constitutes “cause” entitling the Movant to relief from the automatic stay under 11 U.S.C. §362 (d)(1). A continued failure by a debtor to maintain regular payments to a secured creditor is sufficient “cause” to entitle a creditor to relief from stay. In re Whitebread, 18 B.R. 193 (Bkrtcy. D. Minn. 1982); In re Keays, 36 B.R. 1016 (Bkrtcy. E.D. Pa. 1984); In re David, 64 B.R. 358 (Bkrtcy. S.C.N.Y. 1986).

In view of the Debtor’s inability to make payments toward his loan obligation, the Movant's interest in the real property of the Debtor is not adequately protected. A continuing default by the Debtor will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtor is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtor. The Debtor’s offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

CONCLUSION

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: August 27, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter
Rebecca F. Schiller
Attorneys for Movant
The Academy Professional Building
25 North Dale Street, 2nd Floor
St. Paul, MN 55102-2227
(651) 209-9760
Attorney Reg. 152262
(F0390)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: DAVID JOHNLEE BILLUPS,

BKY. No.: 03-34137

Chapter 13

Debtor.

UNSWORN DECLARATION FOR PROOF OF SERVICE

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The St. Paul Building, 6 West 5th St., St. Paul, Minnesota 55102 declares that on August 30, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Jasmine Z. Keller
Trustee
12 S. 6th St., Ste. 310
Minneapolis, MN 55402

United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

David Johnlee Billups
294 Thomas Ave.
St. Paul, MN 55103

Michael K. Hoverson
Michael K. Hoverson & Assoc.
333 Washington Ave. N., Ste. 308
Minneapolis, MN 55401

Household Mortgage Services
P.O. Box 60113
City of Industry, CA 91716

Greater Frogtown Comm. Dev. Corp.
689 N. Dale St.
St. Paul, MN 55103

And I declare, under penalty of perjury, that the foregoing is true and correct.

REITER & SCHILLER

Dated: August 30, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

The Academy Professional Building

25 North Dale Street, 2nd Floor

St. Paul, MN 55102-2227

(651) 209-9760

Attorney Reg. 152262

(F0390)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: DAVID JOHNLEE BILLUPS,

Debtor.

BKY. No.: 03-34137
Chapter 13

ORDER TERMINATING STAY

This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on September 20, 2004 in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota. The movant, Mortgage Electronic Registration Systems, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Lot 11, Block 6, Robertson and Van Etten's Addition to Saint Paul,
Ramsey County, Minnesota
REGISTERED PROPERTY.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: _____

The Honorable Gregory F. Kishel
Chief Judge of U.S. Bankruptcy Court